



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4000 telephone • 512-804-4811 fax • [www.tdi.texas.gov](http://www.tdi.texas.gov)

## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

**Requestor Name**

East Texas Medical Center

**Respondent Name**

New Hampshire Insurance Co

**MFDR Tracking Number**

M4-14-0120-01

**Carrier's Austin Representative**

Box Number 19

**MFDR Date Received**

September 9, 2013

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "...this claim was denied as not covered for assistant surgeon per Medicare guidelines this procedure code 64776-AS is covered with documentation..."

**Amount in Dispute:** \$278.00

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "The Carrier is going to maintain their denial that the additional \$278.00 is not owed to the requestor."

**Response Submitted by:** AIG, 4100 Alpha Road, Suite 700, Dallas, Texas 75244

### **SUMMARY OF FINDINGS**

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
September 25, 2012	64776 – AS	\$278.00	\$102.05

### **FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.203 sets out the reimbursement guidelines for professional medical services.
3. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - 172 – Payment is adjusted when performed/billed by a provider of this specialty.
  - This procedure is not payable to an assistant surgeon
  - Our position remains the same if you disagree please contact the TWCC Medical Dispute Resolution

**Issues**

1. Did the requestor support the services in dispute are separately payable?
2. Is the requestor entitled to reimbursement?

## **Findings**

1. 28 Texas Administrative Code §134.203(b) states, "For coding, billing, reporting, and reimbursement of professional medical services, Texas workers' compensation system participants shall apply the following: (1) Medicare payment policies, including its coding; billing; correct coding initiatives (CCI) edits; modifiers; bonus payments for health professional shortage areas (HPSAs) and physician scarcity areas (PSAs); and other payment policies in effect on the date a service is provided with any additions or exceptions in the rules." Review of the submitted medical claims the provider billed with CPT code 64776. Per CMS Physician Fee Schedule, [www.cms.hhs.gov](http://www.cms.hhs.gov) this procedure has an indicator of "0" in the Assistant at Surgery Field which means, "0 = Payment restriction for assistants at surgery applies to this procedure unless supporting documentation is submitted to establish medical necessity." Review of the document titled, "Operation Procedure" finds;

- a. Scott Phillips, PA-C listed as assistant (A surgical assist was needed secondary to position, prepping, draping, holding retraction, help with closure, and application of dressing.)

The submitted documentation provided explanation as to need for assistant. Therefore, the service in dispute will be reviewed per applicable rules and fee guidelines.

2. Per 28 Texas Administrative Code §134.203 (c) states, "To determine the MAR for professional services, system participants shall apply the Medicare payment policies with minimal modifications. (1) For service categories of Evaluation & Management, General Medicine, Physical Medicine and Rehabilitation, Radiology, Pathology, Anesthesia, and Surgery when performed in an office setting, the established conversion factor to be applied is (date of service year). For Surgery when performed in a facility setting, the established conversion factor to be applied is (date of service year)." The maximum allowable reimbursement is calculated as follows: (2012 DWC Conversion Factor / Medicare Conversion Factor) x Non-Facility Price. Per CMS Claims processing Manual, Chapter 12, Section 110.2, "The contractor shall pay covered PA assistant-at-surgery services at 80 percent of the lesser of the actual charge or 85 percent of what a physician is paid under Medicare Physician Fee Schedule. Since physicians are paid at 16 percent of the surgical payment amount under the Medicare Physician Fee Schedule for assistant-at-surgery services, the actual payment amount that PAs receive for assistant-at-surgery services is 13.6 percent of the amount paid to physicians." (Fee schedule allowable is  $\$370.82 \times .13.6\% = \$55.43$ ) as above ( $68.88 / 34.3076 \times 55.43 = \$102.05$ ). The maximum allowable reimbursement is \$102.05. This amount is recommended.

## **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$102.05.

## **ORDER**

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$102.05 plus applicable accrued interest per 28 Texas Administrative Code §134.130 due within 30 days of receipt of this Order.

## **Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

July 23, 2014  
\_\_\_\_\_  
Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, 37 *Texas Register* 3833, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**